IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. A. No. **399 of 2003**

Judgment reserved on : 30.4.2007

Date of Decision : September 12, 2007

Tek Chand …Appellant

Versus

State …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Surjit Singh, Judge.

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *Yes*

For the appellant : Mr. Anup Chitkara, Advocate.

For the respondent. Mr. Ashok Chaudhary, Addl. Advocate General

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Per Sanjay Karol, J.

The present appeal arises out of the judgment dated 26/28.6.2003 passed by the Sessions Judge, Chamba, in Sessions Trial Case No. 5 of 2001, whereby the appellant has been convicted and sentenced u/s 302 IPC to undergo imprisonment for life and also pay a fine of Rs.5000/- failing which to further undergo simple imprisonment for a period of six months.

On 12.6.2000 at about 4.30 p.m., FIR No. 119/2000 was registered under Sections 302, 34 IPC in Police Station, Sadar, Distt. Chamba, stating that Purkho, Lachho and Chattar Singh,

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

brothers were residing in village Babjah, pargana Gudial Teshil Sadar, District Chamba. Jaggo eldest son of Shri Purkho, with the help of Lachho solemnized marriage with Ms. Roshni Devi daughter of accused Tek Chand. Tek Chand nursed a grudge against Shri Lachho and an attempt was made to reconcile their differences and maintain cordial relations and as an effort in that direction, on 10.6.2000 deceased Lachho got a meeting hereinafter referred to as Panchi convened with the intervention of the President Harbhajan Singh and members Kesho and Sher Mohamd. In the said Panchi, an attempt was made to patch-up the matter, however, Tek Chand left the meeting in a huff saying that the decision of Panchi was not acceptable to him and threatened that they would kill Lachho, Jaggo and Roshni Devi. On 12.6.2000, complainant Chattar Singh was informed by his daughter Cheeno that the dead body of Lachho was lying at a place known as Admal, near Mundwa nallah and after visiting the spot and on seeing the dead body, the matter was reported to the police. Appellant and his two sons, namely, Bachan Singh and Pyar Singh were suspected to have inflicted the injuries and killed the deceased for the reason that they were nursing a grudge against the deceased.

H.C. Narinder Kumar (PW-5) after recording the complaint of Chattar Singh (PW-12) registered FIR (Ext.PK) and after complying with the necessary formalities handed over the case file for investigation to Gurbachan Singh (PW-21), who proceeded to the place of occurrence of offence. He prepared a site plan (Ext.PA), filled up the inquest report (Ext.PN), took into possession articles of the deceased, namely, bag (Ext.P16), Kullu cap (Ext.P17), watch

(Ext.P18), diary (Ext.P19) and sealed the same in the presence Shri Kesho (PW-15) and Shri Purkho (PW-13) vide memo (Ext.PO). 8 Kgs. cheese lying at a distance of about 20 feet from the dead body of the deceased was handed over to complainant Chattar Singh (PW-12) vide memo (Ext.PP). Blood stained earth was taken into possession vide memo (Ext.PQ) and sealed. Control sample of earth was taken into possession vide memo (Ext.PR). Photographs (Exts. P-2 to P-5) were taken at the spot. The dead body was sent for post-mortem vide application (Ex.PZ) and the report thereof (Ext.PJ) was obtained. On 12.6.2000 itself, at about 7.30 p.m. accused Tek Chand came to the police station, Sadar, Chamba and stated that in the morning of the same day, Lachho had died in a quarrel. The accused was having injury in his hand, which was bleeding, therefore, he was sent to the hospital for examination and this information was recorded in the daily diary No. 17 (Ext.PY) dated 12.6.2000, Police Station, Sadar,District Chamba. Accused was treated in the hospital by Dr. S. Sharad (PW-10). Accused Tek Chand made a disclosure statement (Ext.PW) on the basis of which weapon of offence i.e. knife (Chhura) (Ext.P1) was recovered from the bushes at a distance of about 80 yards from the place of occurrence. Case property including all the samples of earth, blood stained earth, clothes were sealed, deposited and sent for examination. Reports of the Chemical Examiner (Exts.PG & PH) were obtained during investigation, statements of the witnesses were recorded and finally the challan dated 27.8.2000 and supplementary challan dated 2.10.2000 were presented in Court for trial.

After complying with the provisions of Section 207 Cr.PC, all the accused were charged with the offences punishable under Sections 302, 120-B and 34 IPC. Accused persons did not plead guilty and were, therefore, put to trial.

In all, statements of 21 prosecution witnesses were recorded by the Trial Court. Statements of accused persons under Section 313 Cr.PC were recorded. No defence evidence was led by the appellant. After considering the entire material on record, the Court below held the appellant guilty of offence under Section 302 IPC and convicted and sentenced accordingly.

Shri Jaggo (PW-1) has stated that he had solemnized marriage with Ms. Roshani, on 17.5.2000, and the accused was nursing a grudge against his uncle Lachho Ram and in order to establish cordial relation a Panchi had been convened on 10.6.2000. From the suggestion put to this witness, in cross examination, the fact that Panchi had been convened is not in dispute.

Shri Harbhajan Singh (PW-2) Up-Pradhan of Gram Panchayat, Sillagharat has stated that on 10.6.2000, a Panchi was convened in the house of Shyama, attended by Sher Mohmd (PW-9) & Kesho (PW-15) to amicably settle the matter between Tek Chand and deceased. In the said meeting, accused Tek Chand proclaimed that deceased Lachho had firstly established relations with his wife and thereafter with his daughter and questioned the acceptance of evidence of a woman on this issue, Tek Chand left the Panchi. On 12.6.2000 between 8 & 9.00 a.m. Tek Chand had met him and borrowed money, when it was noticed that his hand was smeared with blood and his clothes were having blood stains. He has also

deposed that the deceased had met him and informed him that accused Tek Chand had threatened him. From his deposition, it is clear that the witness has not been cross-examined on the fact that Panchi was called, accused had threatened the deceased; accused had met the witness and borrowed the money.

Dr. K. L. Sharma (PW-4) has deposed that the deceased had suffered the following injuries which could have been caused with the knife (Ext.P-1):-

"1. A wide lacerated wound found on the left side of chest on the lower aspect. Inter costal muscle exposed. Size of the injury was 4"x1"x1/2".
2. An incised wound on the left side of alencrance bone of the size of 3"x1x4"x1/4".
3. Mark of ligature on neck was normal.

Skull: Normal.

Thorax

Walls, ribs and cartilages. :	Walls of ribs lacerated wound of left side broken. Blood in the wound.
Pleurae :	Left side pleurae region continuity disturbed.
Larynx and tachea:	Normal
Right lung	
Left lung :	Being sent for chemical examination.
Paricardium heart large vessels :	Normal

Abdomen: The parts of abdomen were sent to chemical examiner.

Muscles, bones and joints :

1. A lacerated wound on left side of the chest in the lower aspect. Inter costal muscle exposed. Size 4"x1"x1/2".

2. Incised wound in left side of alecrance bone. Size 3”x1x4”x1/4”.

Dr. S. Sharad (PW-10) who examined the accused has deposed that the accused had an injury of a cut wound on the ventral side of left thumb of 6 cms. It was U shaped and was having abrasion on the back side at two places. He opined that the injury was simple in nature resulting from use of sharp weapon. Accused Tek Chand had confessed before him of having committed the murder and surrendered himself before the police. The fact that the accused suffered injuries has not been disputed. Importantly, the statement of the witness that the accused had confessed the commission of crime and surrendered before the police goes un-rebutted.

Shri Sher Mohmd. (PW-9) has deposed that Panchi was called and attended by several persons including the deceased and the accused Tek Chand , his wife, daughter and daughter-in-law and that the decision being unacceptable Tek Chand informed that he would decide the matter at his own and himself. Importantly, there is no cross-examination with regard to the presence of the accused in the said Panchi.

Shri Chattar Singh (PW-12), brother of the deceased, has deposed that on having learnt about the death of his brother, he had informed the police through his daughter Cheeno (PW-14). Accused Tek Chand used to hurl abuses to Jaggo and Lachho was threatened by him. An attempt was made to compromise the matter by sending messages to Tek Chand. To this witness, a suggestion

was put to the effect that Sher Mohd. had told accused Tek Chand that the testimony of female is not acceptable to Panches.

Thus it, it is clear that Panchi had taken place and is not in dispute.

Shri Purkho (PW-13) has also deposed that the accused persons had threatened Lachho and that Panchi had been convened. According to him, Smt. Bhagat (PW-20) had spent a night in the house of accused Tek Chand where he had threatened to kill Lachho with knife. He was informed of the same and, therefore, Panchi was convened. From the following suggestion put to this witness, it is also clear that the Panchi had been called:-

> "It is correct that accused Tek Chand told the Panches to record the statement of his daughter. But when no allegation proved against Lachho, then statement of girl of Tek Chand was not taken. It is incorrect that Sher Mohmd. had told Tek Chand that we do not accept the testimony of female."

Shri Kesho (PW-15) has deposed that a meeting of Panches was called and the accused had threatened that he would decide the matter at his own level and had left the Panchi. Smt. Halli (PW-16) wife of the deceased has supported the version of the other witnesses.

Shri Bhagat Ram (PW-17) the only eye witness has turned hostile. However, in his deposition, he admits having seen the dead body of Lachho on 12.6.2000 at about 7.30 A.M. at Admal Nallah. He has also admitted that the accused are from his area and he knows them from the very beginning of his childhood. This

witness has been confronted with his statement recorded under Section 161 Cr.PC which is reproduced as under:-

> "I am residing at the above mentioned address and am an agriculturist by profession. On 12.6.2000, while I was on my way to village Kuliardha in connection with some work and about 7.30/8 A.M. when I reached near Admal Nullah, I saw a basket lying on the path. Upon this, I saw downward the Nullah and saw that Lachho Ram was caught hold of by Bachan Singh and Teko stabbed him with dagger. Out of fear, I said nothing to them, thinking it, had I asked them not to do so, they would have killed me also being an eye witness and I ran away from there. I did not disclose this fact to any person. After some days, I told it to Chatro, brother of Lachho that I had seen Teko and Bachan Singh while they were committing the murder of Lachho. Statement heard which is correct."

Infact, as per version of Shri Gurbachan Singh (PW-21) this statement under Section 161 Cr.PC (Ext.PS) was recorded by him correctly and this witness has not been cross examined on this point. This statement is of no evidentiary value. But the presence of this witness at the time of incident is clearly borne out from his following deposition:-

> ""I cannot disclose the names of persons as referred to above by me who were present in the nullah, however, they are from my area. I had not enquired from those persons as to what had happened to Lachho."

From the version of Shri Baghu (PW-18), accused Tek Chand had disclosed to the police that he had killed Lachho with Chhura which he had concealed in the bushes and could get the same recovered. The statement of the accused (Ext.PU) was recorded in his presence along with that of Jai Singh. Accused Tek Chand got the

knife recovered from the bushes which was measured at the spot and sketch of the same was prepared (Ext.PV). The knife was having blood stains and was sealed at the spot. In Court, he has identified the same.

Smt. Bhagat (PW-20) has deposed that deceased Lachho was her real sister's husband and accused Tek Chand is her brother-in-law in relation. She had to spend night in the house of the accused when during night the accused told her that 'you are a widow and her sister will also become widow and that he would not spare Lachho because he did wrong by taking away his daughter.' Then he had shown her the knife which he had sharpened to kill Lachho. She identified the knife in the Court. In the morning, she had visited her sister's house and had advised her sister to compromise the matter with the accused otherwise he would not spare Lachho and that is why Panchi was convened.

Learned counsel for the appellant has contended that the case of the prosecution is false and that the accused has been wrongly convicted for the following reasons:-

i) The vital link in the case of the prosecution, namely, Roshni Devi on the point of motive to kill the deceased is missing; the fact that Shri Jaggo (PW-1) had married Ms. Roshni Devi is not disputed.

The fact that a meeting (Panchi) had been convened to settle the dispute between Lachho and the accused is clearly borne out from the testimony of PW-1, PW-2, PW-9, PW-12, PW-13, PW-15 & PW-16. That accused was present in the said Panchi is

also clear from the statements of PW-12 & PW-20. Further threats were meted out to the deceased is clearly borne out from the statement of Shri Harbhajan Singh (PW-2), Sher Mohmd. (PW-9) and Kesho (PW-15), members of the Panchi and also Chattar Singh (PW-12), Purkho (PW-13), Smt. Halli (PW-16) & Smt. Bhagat (PW-20). The accused had expressed his intention to settle the matter himself with various persons at different times is also clear from the deposition of witnesses. Even Harbhajan Singh (PW-2) who had not fully supported the version of the prosecution has admitted that "it is correct that Lachho Ram deceased approached me again on the same day and he told me that accused Tek Chand was giving threat to him".

Therefore, in my view, Ms. Roshni Devi is not a vital link in the case of the prosecution. Independent witnesses had no reason to depose against the accused persons. They are respectable members of the society having no grievance or grudge against the accused persons.

ii) The learned counsel has further argued that the circumstance of strong suspicion is equal and same against all the accused and, therefore, if the other accused persons have been acquitted then the appellant was also entitled for acquittal of the same.

I do not find favour with the said submission of the counsel for the simple reason that no doubt Halli (PW-16) wife of the deceased has deposed that the accused persons were threatening the deceased but however Harbhajan Singh (PW-2), Sher Mohmd

(PW-9), Kesho (PW-15) and Bhagat (PW-20) have independently stated that it was the appellant who had meted out threats and proclaimed that he would settle the matter himself and had threatened and proclaimed to Smt. Bhagat (PW-20) that he would kill the deceased with his knife. In any event, acquittal of one in itself would not be a reason good enough to acquit the others in the presence of substantial evidence on record to prove the guilt of the accused for the commission of the offence. Further, Shri Bhagat Ram (PW-17) a hostile witness present at the time and place of occurrence while refusing to disclose the names of the persons present in the Nallah at the place of occurrence, has infact confirmed that such persons were from the area. The presence of the accused cannot be ruled out. There is disclosure statement of the appellant and the knife was recovered on the basis of the same. The appellant had himself surrendered before ASI Mangal Singh (PW-19) and admitted his guilt before him and PW-10. The State can always file an appeal assailing the judgment of acquittal qua others.

(iii) Learned counsel for the appellant has next submitted that there have been material improvements in the statements of the witnesses as there is no mention of proclamation of threats in the FIR.

Perusal of the statements of the witnesses would show that there are hardly any improvements which would render the version of the prosecution untrue. Simply because FIR is silent of a particular fact that itself cannot be a ground for disbelieving the prosecution case. As has already been held earlier, threats have been meted out by the accused to the deceased in the presence of

the independent witnesses. There is no reason for these witnesses to have deposed falsely against the accused person.

(iv) Learned counsel has further argued that the version of Smt. Bhagat (PW-20) is absolutely false and unbelievable for the reason that parents of Smt. Bhagat also resided in village Banjah, therefore, there was no occasion or need for her to have stayed in the house of Tek Chand for a night particularly when the family was undergoing stress and strain due to the marriage.

This contention of the learned counsel is unacceptable. PW-20 is the sister-in-law of the deceased and had stayed in the house of the accused when he disclosed his intention of killing the accused. Thereafter the Panchi was called. The witness has stated that accused Tek Chand is her brother-in-law in relation. She has stated that she had taken her son to Chamba for getting him medically examined and because it had fallen dark on her way back from Chamba to her village at Lunekh, she had to spend the night in the house of Tek Chand which fell on the way to her village. The explanation is quite plausible. There is no cross-examination at all as to why the witness did not reside with her parents on that night. From the version of Chattar Singh (PW-12), it is evident that the family members of the deceased including the said witness had been visiting the house of the accused to get the matter compromised. Smt. Halli (PW-16) has corroborated the version of Smt. Bhagat who had met her in her house on the next morning. Admittedly, therefore, parties being relatives were making attempts to sort out the matter. Therefore, there would be nothing unusual for this witness to have stayed in the house of accused appellant.

(v) Learned counsel has further submitted that the statement of PW-20 was not scribed under Section 161 Cr.PC and she was examined for the first time in the Court on the basis of an application made under Section 311 Cr.PC. Therefore, she being a material witness, ought to have been examined during the course of investigation and in any case, there is improvement in the case of the prosecution. This submission is also without substance and needs to be rejected. In law it is always permissible to adduce evidence of a material witness. In any case, her deposition is totally in time with the prosecution case and no new case has been set up by the prosecution.

(vi) The learned counsel has next argued that the circumstance of proclamation made by the accused in the Panchi is not proved and in any case, they do not infer the intent of the accused to kill Lachho. Learned counsel has relied upon the statements of Harbhajan Singh (PW-2), Sher Mohmd (PW-9), Chhatar Singh (PW-12), Purkho (PW-13), Kesho (PW-15) & Halli (PW-16), to contend that the witnesses are stating different words and are not stating similar or some what similar words and in any case without any corroboration reliance thereupon would be extremely misplaced.

The submission of the learned counsel is unacceptable for the simple reason that the witnesses are of rural background and may not be very careful and particular in their choice of words but perusal of the statements would nonetheless show that their stand with regard to the threats meted out to the deceased by the accused is unanimous. PW- 13, PW-15 & PW-16 have unanimously deposed

that the accused left the Panchi as not being acceptable had expressed his intention of deciding the matter at his own level.

(vii) Learned counsel has further contended to argue that the presence of PW-12, PW-13, PW-15 & PW-16 in the Panchi is doubtful and not proved.

The submission is not correct. Shri Chattar Singh (PW-12) has mentioned that PW-9, PW-13 & PW-15 attended the Panchi. PW-9 has mentioned about the presence of PW-13. Shri Purkho (PW-13) has mentioned the presence of Chattar Singh (PW-12), accused, his family members and also Panches. Emphasis is being laid on the statement of Smt. Halli (PW-16) , who does not corroborate the presence of PW-12, PW-13 & PW-15 and also the statement of Shri Kesho (PW-15) who does not state the presence of PW- 12, PW-13 & PW- 16 in the Panchi. In my view, each of the witnesses have mentioned not only their presence but presence of some of the other witnesses. Shri Chattar Singh (PW-12) infact has mentioned the presence of all the witnesses. Simply because some of the witnesses have not mentioned the presence of another witness, by itself would not render the version to be false, incorrect or unreliable. It has already come on record that a meeting was convened and infact the accused was also present.

(viii) An endeavour has been made by the learned counsel to contend that from the material on record another hypothesis, leading to the innocence of the accused, is borne out. A bag was found hanging from the shoulder of the deceased, and since nothing was recovered from the same, therefore, possibility of accused carrying money and valuables and having been killed for the same

can not be ruled out. The submission of the learned counsel is preposterous as it is no body's case that the deceased was carrying money. Infact he was carrying cheese in the basket to sell the same in the market. He could have carried the bag to put the sale proceeds in the same. The hypothesis, as suggested, needs to be rejected keeping in view the attending circumstances and the evidence which has already come on record.

The fact that the deceased Lachho had helped Jaggo (PW-1) in contracting marriage with Santosh daughter of appellant Tek Chand is evident from the statement of Jaggo (PW-1). The marriage took place on 16.5.2000. Through the statements of the witnesses, it has come on record that appellant Tek Chand was nursing a grudge against the deceased for having helped Jaggo (PW-1) in contracting the said marriage. From the statement of S/Shri Harbhajan Singh (PW-2), Sher Mohmd. (PW-9), Chattar Singh (PW-12), Purkho (PW-13), Kesho (PW-15), Halli (PW-16), it is proved that a meeting i.e. Panchi was got convened on 10.6.2000 to normalize the relation between the deceased and the appellant, but the decision of Panchi was not acceptable to Tek Chand and he left the meeting in a huff. PW-2 has seen the wound and the blood stained clothes and hand of the accused on 12.6.2000, the date of the murder. PW-17 has deposed that he saw the dead body of the deceased at about 7.30 A.M. ASI Mangal Singh (PW-19) has deposed that on 12.6.2000 appellant surrendered and confessed having committed the crime. He was sent to the hospital for treatment of the injuries on his body, where he was examined by Dr. S. Sharad (PW-10), who has deposed that he treated the accused, who had also confessed the

commission of crime before him. Through the statements of Sher Mohmd. (PW-9), Purkho (PW-13) & Kesho (PW-15), it is proved that the accused had threatened that he would settle the matter with the deceased himself. Smt. Bhagat (PW-20), sister-in-law of the deceased has deposed that she had been told by the appellant that he would be killing the deceased with a knife which was shown to her as the deceased had done wrong by taking away his daughter.

The weapon of offence has been recovered on the statement of the accused-appellant and the Doctor had opined that the injury on the body of the deceased could have been caused with the use of the said weapon. The accused has confessed his guilt in the presence of a Doctor who is an independent witness. Further, it has come on record that the accused has not only surrendered himself before the police but had suffered injury on his body, which as per the version of PW-10 could have been caused with the weapon of offence.

From all the attending circumstances as also the statements of the witnesses and the material on record, I have no doubt in my mind that the circumstance leads to no other hypothesis except that it definitely raise a finger of guilt against the accused. Statements of the witnesses are creditworthy and inspire confidence. There is cogent and clear material to show the complicity of the accused with the commission of the offence with which he is being charged. The testimony of the witness is unshaken and totally reliable.

Following are the circumstances to show that the appellant had committed the murder of the deceased.

i) There was motive for the accused to have killed the deceased as he had helped Jaggo in getting married to Smt. Roshni Devi daughter of deceased;

ii) Appellant had threatened and proclaimed his intention of killing the deceased. He was carrying a grudge against the accused;

iii) A Panchayat was called to sort out the differences at the instance of the deceased; Prominent and independent witnesses have deposed against the accused. The statements of these witnesses are consistent, creditworthy and reliable.

iv) The accused had surrendered himself before the Police Station and confessed his guilt even before the Doctor;

v) The weapon of offence i.e. knife was recovered on the statement of the accused. The Doctors have opined that the injury would have been caused by the same.

vi) Acused had suffered injury on his left thumb which according to the Doctor could have been caused by a sharp edged weapon i.e. knife.

vii) the timing of the injury of the accused and the injury on the body of the deceased matched;

viii) Independent witnesses had seen blood in the hand and clothes of the appellant;

ix) Presence of appellant at the place of occurrence is not ruled out.

x) All the aforesaid circumstantial evidence would show that each one of the circumstances is a link in the chain of

events by which it has been proved and established beyond doubt; leading to the only inference that the accused is guilty of the offence charged for.

In view of aforesaid facts and circumstances, we find no reason to interfere with the conclusion of the Court below and the present appeal is accordingly dismissed. Bail bonds of the accused, who is on bail, are cancelled and he is directed to surrender immediately and not later than four weeks from today.

(Surjit Singh), J.

(Sanjay Karol), J.

September 12, 2007
(rana)